

General Assembly

## Substitute Bill No. 142

Februar	y Session.	2016
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*SB00142JUD03	32216*
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## AN ACT CONCERNING REVISIONS TO THE CONNECTICUT UNIFORM POWER OF ATTORNEY ACT AND ADOPTION OF THE CONNECTICUT UNIFORM RECOGNITION OF SUBSTITUTE DECISION-MAKING DOCUMENTS ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. Subsections (a) and (b) of section 1-350e of the 2016
- 2 supplement to the general statutes are repealed and the following is
- 3 substituted in lieu thereof (*Effective July 1, 2016*):
- 4 (a) A power of attorney executed in this state on or after [October 1, 5 2015] July 1, 2016, is valid if its execution complies with section 1-350d.
- 6 (b) A power of attorney executed in this state before [October 1, 7
  - 2015] July 1, 2016, is valid if its execution complied with the law of this
- state as it existed at the time of execution. 8
- 9 Sec. 2. Subsection (a) of section 1-351*l* of the 2016 supplement to the
- 10 general statutes is repealed and the following is substituted in lieu
- 11 thereof (Effective July 1, 2016):
- 12 (a) Unless the power of attorney otherwise provides, language in a
- 13 power of attorney granting general authority with respect to personal
- 14 and family maintenance authorizes the agent to:
- 15 (1) Perform the acts necessary to maintain the customary standard
- 16 of living of the principal, the principal's spouse and the following

- 17 individuals, whether living when the power of attorney is executed or
- 18 later born:
- 19 (A) The principal's children;
- 20 (B) Other individuals legally entitled to be supported by the 21 principal; and
- 22 (C) The individuals whom the principal has customarily supported 23 or indicated the intent to support;
- 24 (2) Make periodic payments of child support and other family 25 maintenance required by a court or governmental agency or an 26 agreement to which the principal is a party;
- 27 (3) Provide living quarters for the individuals described in subdivision (1) of this subsection by:
- 29 (A) Purchase, lease or other contract; or
- 30 (B) Paying the operating costs, including interest, amortization 31 payments, repairs, improvements and taxes, for premises owned by
- 32 the principal or occupied by those individuals;
- 33 (4) Provide normal domestic help, usual vacations and travel 34 expenses and funds for shelter, clothing, food, appropriate education, 35 including post secondary and vocational education and other current
- 36 living costs for the individuals described in subdivision (1) of this
- 37 subsection;
- 38 (5) Pay expenses for necessary health care and custodial care on 39 behalf of the individuals described in subdivision (1) of this subsection;
- 40 (6) Act as the principal's personal representative pursuant to the 41 Health Insurance Portability and Accountability Act, Sections 1171 to 42 1179, inclusive, of the Social Security Act, 42 USC 1320d, as amended 43 from time to time, and applicable federal regulations, in making 44 decisions related to the past, present or future payment for the

- 45 provision of health care consented to by the principal or anyone 46 authorized under the law of this state to consent to health care on 47 behalf of the principal;
- 48 (7) Continue any provision made by the principal for automobiles or 49 other means of transportation, including registering, licensing, 50 insuring and replacing them, for the individuals described in subdivision (1) of this subsection;
- 52 (8) Maintain credit and debit accounts for the convenience of the 53 individuals described in subdivision (1) of this subsection and open 54 new accounts; [and]
  - (9) Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order or other organization or continue contributions to those organizations; and
- 58 (10) Execute a written document in advance of the principal's death, 59 in accordance with section 45a-318, as amended by this act, directing 60 the disposition of the principal's body upon the death of the principal 61 or designating an individual to have custody and control of the 62 disposition of the principal's body upon the death of the principal.
  - Sec. 3. Subsection (a) of section 1-352 of the 2016 supplement to the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2016):
    - (a) The use of the following form in the creation of a power of attorney is authorized, and, when used, it shall be construed in accordance with the provisions of sections 1-350 to 1-353b, inclusive:
    - "Notice: The powers granted by this document are broad and sweeping. They are defined in Connecticut Uniform Power of Attorney Act, which expressly permits the use of any other or different form of power of attorney desired by the parties concerned. The grantor of any power of attorney or the agent may make application to a court of probate for an accounting as provided in subsection (b) of section 45a-

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75 175 of the general statutes. This power of attorney does not authorize 76 the agent to make health care decisions for you. 77 Know All Persons by These Presents, which are intended to 78 constitute a GENERAL POWER OF ATTORNEY pursuant to 79 Connecticut Uniform Power of Attorney Act: 80 That I .... (insert name and address of the principal) do hereby 81 appoint .... (insert name and address of the agent, or each agent, if 82 more than one is designated) my agent(s) TO ACT ..... 83 If more than one agent is designated and the principal wishes each 84 agent alone to be able to exercise the power conferred, insert in this 85 blank the word 'severally'. Failure to make any insertion or the 86 insertion of the word 'jointly' shall require the agents to act jointly. 87 First: In my name, place and stead in any way which I myself could 88 do, if I were personally present, with respect to the following matters 89 as each of them is defined in the Connecticut Uniform Power of 90 Attorney Act to the extent that I am permitted by law to act through an 91 agent: 92 (Strike out and initial in the opposite box any one or more of the subdivisions as to which the principal does NOT desire to give the 93 94 agent authority. Such elimination of any one or more of subdivisions 95 (A) to (M), inclusive, shall automatically constitute an elimination also 96 of subdivision (N).) 97 To strike out any subdivision the principal must draw a line 98 through the text of that subdivision AND write his initials in the box 99 opposite. T1 (A) [real estate transactions (real property)] Real property; T2 (B) [chattel and goods transactions (tangible personal ( ) T3 property)] Tangible personal property;

bonds)] Stocks and bonds;

[bond, share and commodity transactions (stocks and

(C)

T4

T5

Т6	<u>(D)</u>	Commodities and options;	( )
T7	[(D)] <u>(E)</u>	( ) Commodities and options; ( ) [E] [banking transactions (banks and other financial ( )	
Т8	institutions)] Banks and other financial institutions;		
Т9	[(E)] <u>(F)</u>	E)] (F) [business operating transactions (operation of entity or	
T10	business)] Operation of entity or business;		
T11	[(F)] <u>(G)</u>	[insurance transactions (insurance and annuities)]	( )
T12		Insurance and annuities;	
T13	[(G)] <u>(H)</u>	[estate transactions (estates, trusts, and other beneficial	( )
T14	- () - (-)	interests)] Estates, trusts and other beneficial interests;	
T15	[(H)] <u>(I)</u>	[claims] <u>Claims</u> and litigation;	( )
T16	[(I)] <u>(J)</u>	[personal relationships and affairs (personal and family	( )
T17		maintenance)] Personal and family maintenance;	
T18	[(J)] <u>(K)</u>	[benefits from military service (benefits from governmental	( )
T19		programs or civil or military service)] Benefits from	
T20	F (7-5)	governmental programs or civil or military service;	
T21	[(K)	records, reports and statements;	( )
T22	(L)	[retirement] <u>Retirement</u> plans;	( )
T23	(M)	[taxes] <u>Taxes</u> ;	( )
T24	(N)	[all] <u>All</u> other matters;	( )
T25	•••••		· • • • •
T26	•••••		
T27	•••••		
T28	•••••		••••
100	(Specia	al provisions and limitations may be included in the statutory	
101	form power of attorney only if they conform to the requirements of the		
102			
103	(Strike out below and initial in the opposite box any one or more of		
104	the subdivisions as to which the principal does NOT desire to give the		
105	agent authority. To strike out any subdivision the principal must draw		
106	a line through the text of that subdivision AND write his initials in the		
107	<u> </u>		
108	(CAU)	TION: Granting any of the following will give your agent the	
109	authority	to take actions that could significantly reduce your property	
110	or change how your property is distributed at your death.)		
111		YOU SHOULD SEEK LEGAL ADVICE BEFORE	
		(1) DDD FOX 1000 LIGE DOLFOD ZANIO FLIMO 1004 00D 004 40	

T29 T30 T31 T32 T33 T34	(O)	Create, amend, revoke or terminate an inter vivos trust, provided in the case of a trust established for a disabled person pursuant to 42 USC 1396p (d)(4)(A) or 42 USC 1396p (d)(4)(C), the creation of such trust by an agent shall be only as permitted by federal law	( )
T35 T36 T37 T38 T39 T40 T41 T42 T43 T44 T45 T46 T47 T48	(P)	Make a gift, subject to the limitations of the Connecticut Uniform Power of Attorney Act and any special instructions in this power of attorney. Unless otherwise provided in the special instructions, gifts per recipient may not exceed the annual dollar limits of the federal gift tax exclusion under Internal Revenue Code Section 2503(b), or if the principal's spouse agrees to consent to a split gift pursuant to Internal Revenue Code Section 2513, in an amount per recipient not to exceed twice the annual federal gift tax exclusion limit. In addition, an agent must determine that gifts are consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors	()
T49 T50 T51	(Q)	Create or change rights of survivorship	( )
T52 T53	(R)	Create or change a beneficiary designation	( )
T54 T55 T56	(S)	Authorize another person to exercise the authority granted under this power of attorney	( )
T57 T58 T59 T60	(T)	Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan	( )
T61 T62 T63	(U)	Exercise fiduciary powers that the principal has authority to delegate	( )
T64 T65	(V)	Disclaim or refuse an interest in property, including a power of appointment	( )

Second: With full and unqualified authority to delegate any or all or		
the foregoing powers to any person or persons whom my agent(s shall select;		
Third: Hereby ratifying and confirming all that said agent(s) of		
substitute(s) do or cause to be done.		
Fourth:		
LIMITATION ON AGENT'S AUTHORITY		
An agent that is not my ancestor, spouse, or descendant MAY NOT		
use my property to benefit the agent or a person to whom the agent		
owes an obligation of support unless I have included that authority in		
the special instructions.		
Fifth:		
DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)		
If my agent is unable or unwilling to act for me, I name as my		
successor agent:		
Name of Successor Agent:		
Successor Agent's Address:		
If my successor agent is unable or unwilling to act for me, I name as		
my second successor agent:		
Name of Second Successor Agent:		
Second Successor Agent's Address:		
Sixth:		

131	EFFECTIVE DATE
132 133	This power of attorney is effective immediately unless I have stated otherwise in the special instructions.
134 135	In Witness Whereof I have hereunto signed my name and affixed my seal this day of, 20
136	(Signature of Principal) (Seal)
137	(ACKNOWLEDGMENT) <u>"</u>
138 139 140	The execution of this statutory form power of attorney shall be duly acknowledged by the principal in the manner prescribed for the acknowledgment of a conveyance of real property.
141 142 143	No provision of this chapter shall be construed to bar the use of any other or different form of power of attorney desired by the parties concerned.
144 145 146	Every statutory form power of attorney shall contain, in boldface type or a reasonable equivalent thereof, the "Notice" at the beginning of this section.
147 148 149	Sec. 4. Section 1-353b of the 2016 supplement to the general statutes is repealed and the following is substituted in lieu thereof ( <i>Effective July</i> 1, 2016):
150 151 152	(a) Except as otherwise provided in sections 1-350 to 1-353b, inclusive, <u>as amended by this act</u> , on [October 1, 2015] <u>July 1, 2016</u> , said sections apply to:
153 154	(1) A power of attorney created before, on, or after [October 1, 2015] July 1, 2016;
155 156	(2) A judicial proceeding concerning a power of attorney commenced on or after [October 1, 2015] <u>July 1, 2016</u> ; and

- (3) A judicial proceeding concerning a power of attorney commenced before [October 1, 2015] <u>July 1, 2016</u>, unless the court finds that application of a provision of sections 1-350 to 1-353b, inclusive, <u>as amended by this act</u>, would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies.
- (b) An act performed by an agent under a power of attorney before [October 1, 2015] <u>July 1, 2016</u>, is not affected by sections 1-350 to 1-353b, inclusive, as amended by this act.
- Sec. 5. Subsection (a) of section 19a-580e of the 2016 supplement to the general statutes, as amended by section 54 of public act 15-240, is repealed and the following is substituted in lieu thereof (*Effective July* 170 1, 2016):
- 171 (a) Except as authorized by a court of competent jurisdiction, a 172 conservator shall comply with a conserved person's individual health 173 care instructions and other wishes, if any, expressed while the 174 conserved person had capacity and to the extent known to the 175 conservator, and the conservator may not revoke the conserved 176 person's advance health care directive or a directive executed in 177 accordance with subdivision (10) of section 1-351l, as amended by this 178 act, or section 45a-318, as amended by this act, unless the appointing 179 court expressly so authorizes.
- Sec. 6. Subsection (c) of section 19a-580f of the 2016 supplement to the general statutes, as amended by section 51 of public act 15-240, is repealed and the following is substituted in lieu thereof (*Effective July* 1, 2016):
- (c) A power of attorney for health care decisions properly executed prior to October 1, 2006, shall have the same power and effect as provided under section [1-55] 1-54a of the general statutes, revision of 1958, revised to January 1, [2015] 2005, in effect at the time of its

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- Sec. 7. Subdivision (2) of subsection (a) of section 45a-318 of the 2016 supplement to the general statutes, as amended by section 55 of public act 15-240, is repealed and the following is substituted in lieu thereof (*Effective July 1, 2016*):
  - (2) Any conservator of the person authorized pursuant to subdivision (5) of subsection (a) of section 45a-656 to act on behalf of a conserved person, or any agent authorized to act on behalf of a principal, including any agent authorized pursuant to subdivision (1) of section 1-351l, as amended by this act, may execute in advance of such conserved person's or principal's death a written document, subscribed by such conservator or agent and attested by two witnesses, either: (A) Directing the disposition of such conserved person's or principal's body upon the death of such conserved person or principal, which document may also designate an individual to have custody and control of such conserved person's or principal's body and to act as agent to carry out such directions; or (B) if there are no directions for disposition, designating an individual to have custody and control of the disposition of such conserved person's or principal's body upon the death of such conserved person or principal. Such disposition shall include, but not be limited to, cremation, incineration, disposition of cremains, burial, method of interment and cryogenic preservation. Any such document may designate an alternate to an individual designated under subparagraph (A) or (B) of this subdivision. A document executed by a conservator pursuant to this subdivision shall include provisions indicating that such document (i) is valid if the person is under conservatorship at the time of his or her death, and (ii) terminates upon the termination of the conservatorship when such termination occurs prior to the death of the conserved person.
  - Sec. 8. Subsection (a) of section 45a-660 of the 2016 supplement to the general statutes, as amended by section 53 of public act 15-240, is repealed and the following is substituted in lieu thereof (*Effective July*

221 1, 2016):

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(a) (1) A conserved person may, at any time, petition the court of probate having jurisdiction for the termination of a conservatorship. A petition for termination of a conservatorship shall be determined by a preponderance of the evidence. The conserved person shall not be required to present medical evidence at such a hearing. A hearing on the petition shall be held not later than thirty days after the date the petition was filed in the Court of Probate, unless the hearing is continued for good cause. If such hearing is not held within such thirty-day period or continuance period, if applicable, conservatorship shall terminate. If the court of probate having jurisdiction finds a conserved person to be capable of caring for himself or herself, the court shall, upon hearing and after notice, order that the conservatorship of the person be terminated. [The court may also order the reinstatement of any authority of any agent under a power of attorney that was previously limited, suspended or terminated by the court because of the conservatorship.] If the court finds upon hearing and after notice which the court prescribes, that a conserved person is capable of managing his or her own affairs, the court shall order that the conservatorship of the estate be terminated and that the remaining portion of the conserved person's property be restored to the conserved person. The court may order the reinstatement of any authority of any agent under a power of attorney that was previously limited or suspended by the court because of the conservatorship. (2) If the court finds upon hearing and after notice which the court prescribes that a conserved person has no assets of any kind remaining except for that amount allowed by subsection (c) of section 17b-80, the court may order that the conservatorship of the estate be terminated. The court shall thereupon order distribution of the remaining assets to the conservator of the person or, if there is no conservator or the conservator declines or is unable to accept or the conservator is the Commissioner of Social Services, to some suitable person, to be determined by the court, to hold for the benefit of the conserved person, upon such conservator or person giving such

- 255 probate bond, if any, as the court orders. (3) If any conserved person
- 256 having a conservator dies, the conserved person's property other than
- 257 property which has accrued from the sale of the conserved person's
- 258 real property shall be delivered to the conserved person's executor or
- 259 administrator. The unexpended proceeds of the conserved person's
- real property sold as aforesaid shall go into the hands of the executor
- or administrator, to be distributed as such real property would have
- 262 been.
- Sec. 9. (NEW) (Effective October 1, 2016) Sections 9 to 18, inclusive, of
- 264 this act may be cited as the "Connecticut Uniform Recognition of
- 265 Substitute Decision-Making Documents Act".
- Sec. 10. (NEW) (Effective October 1, 2016) As used in sections 9 to 18,
- 267 inclusive, of this act:
- 268 (1) "Decision maker" means a person authorized to act for an
- 269 individual under a substitute decision-making document, whether
- 270 denominated a decision maker, agent, attorney-in-fact, proxy or
- 271 representative or by another title. "Decision maker" includes an
- 272 original decision maker, a co-decision maker, a successor decision
- 273 maker and a person to which a decision maker's authority is delegated;
- 274 (2) "Good faith" means honesty in fact;
- 275 (3) "Health care" means a service or procedure to maintain,
- 276 diagnose, treat or otherwise affect an individual's physical or mental
- 277 condition;
- 278 (4) "Person" means an individual, estate, business or nonprofit
- 279 entity, public corporation, government or governmental subdivision,
- agency or instrumentality, or other legal entity;
- 281 (5) "Personal care" means an arrangement or service to provide an
- individual shelter, food, clothing, transportation, education, recreation,
- social contact or assistance with the activities of daily living;

- 284 (6) "Property" means anything that may be subject to ownership, 285 whether real or personal or legal or equitable, or any interest or right 286 therein;
  - (7) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and
- 290 (8) "Substitute decision-making document" or "document" means a 291 record created by an individual to authorize a decision maker to act for 292 the individual with respect to property, health care or personal care.
- Sec. 11. (NEW) (*Effective October 1, 2016*) (a) A substitute decisionmaking document for property executed outside this state is valid in this state if, when the document was executed, the execution complied with the law of the jurisdiction indicated in the document or, if no jurisdiction is indicated, the law of the jurisdiction in which the document was executed.
  - (b) A substitute decision-making document for health care or personal care, including the appointment of a health care representative, executed outside this state is valid in this state if, when the document was executed, the execution complied with: (1) The law of the jurisdiction indicated in the document or, if no jurisdiction is indicated, the law of the jurisdiction in which the document was executed; or (2) the law of this state, other than sections 9 to 18, inclusive, of this act.
  - (c) Except as otherwise provided by law, other than sections 9 to 18, inclusive, of this act, a photocopy or electronically transmitted copy of an original substitute decision-making document has the same effect as the original.
  - Sec. 12. (NEW) (*Effective October 1, 2016*) The meaning and effect of a substitute decision-making document and the authority of the decision maker are determined by the law of the jurisdiction indicated in the document or, if no jurisdiction is indicated, the law of the jurisdiction

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- in which the document was executed.
- Sec. 13. (NEW) (Effective October 1, 2016) (a) Except as provided in
- subsection (f) of section 1-56b, section 19a-579b and section 19a-580g of
- 318 the general statutes, a person that in good faith accepts a substitute
- 319 decision-making document without actual knowledge that the
- document is void, invalid or terminated, or that the authority of the
- 321 purported decision maker is void, invalid or terminated, may assume
- 322 without inquiry that the document is genuine, valid and still in effect
- 323 and that the decision maker's authority is genuine, valid and still in
- 324 effect.
- 325 (b) A person who is asked to accept a substitute decision-making
- document may request and without further investigation rely on:
- 327 (1) The decision maker's assertion of a fact concerning the
- 328 individual for whom a decision will be made, the decision maker or
- 329 the document;
- 330 (2) A translation of the document if the document contains, in whole
- or in part, language other than English; and
- 332 (3) An opinion of counsel regarding any matter of law concerning
- 333 the document if the person provides in a record the reason for the
- 334 request.
- Sec. 14. (NEW) (Effective October 1, 2016) (a) Except as provided in
- subsection (b) of this section, or by law of this state other than sections
- 9 to 13, inclusive, of this act, and sections 15 to 18, inclusive, of this act,
- 338 a person who is asked to accept a substitute decision-making
- 339 document shall accept within a reasonable time a document that
- 340 purportedly meets the validity requirements of section 11 of this act.
- 341 The person may not require an additional or different form of
- document for authority granted in the document presented.
- 343 (b) A person that is asked to accept a substitute decision-making
- document is not required to accept the document if:

- 345 (1) The person otherwise would not be required in the same 346 circumstances to act if requested by the individual who executed the 347 document;
- 348 (2) The person has actual knowledge of the termination of the 349 decision maker's authority or the document;
- 350 (3) The person's request under subsection (b) of section 13 of this act 351 for the decision maker's assertion of fact, a translation or an opinion of 352 counsel is refused;
- 353 (4) The person in good faith believes that the document is not valid 354 or the decision maker does not have the authority to request a 355 particular transaction or action; or
- (5) The person makes, or has actual knowledge that another person has made, a report to the Office of Protection and Advocacy for Persons with Disabilities or the Department of Social Services stating a belief that the individual for whom a decision will be made may be subject to abuse, neglect, exploitation or abandonment by the decision maker or a person acting for or with the decision maker.
- 362 (c) A person that in violation of this section refuses to accept a substitute decision-making document is subject to:
- 364 (1) A court order mandating acceptance of the document; and
- 365 (2) Liability for reasonable attorney's fees and costs incurred in an action or proceeding that mandates acceptance of the document.
- Sec. 15. (NEW) (*Effective October 1, 2016*) The remedies under sections 9 to 18, inclusive, of this act are not exclusive and do not abrogate any right or remedy under law of this state, other than sections 9 to 18, inclusive, of this act.
- Sec. 16. (NEW) (*Effective October 1, 2016*) In applying and construing sections 9 to 18, inclusive, of this uniform act, consideration must be

given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

Sec. 17. (NEW) (*Effective October 1, 2016*) Sections 9 to 18, inclusive, of this act, modify, limit or supersede the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 et seq., but do not modify, limit or supersede Section 101(c) of said act, 15 USC 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of said act, 15 USC 7003(b).

Sec. 18. (NEW) (*Effective October 1, 2016*) Sections 9 to 17, inclusive, of this act apply to a substitute decision-making document created before, on or after October 1, 2016.

This act shall take effect as follows and shall amend the following		
sections:		
Section 1	July 1, 2016	1-350e(a) and (b)
Sec. 2	July 1, 2016	1-3511(a)
Sec. 3	July 1, 2016	1-352(a)
Sec. 4	July 1, 2016	1-353b
Sec. 5	July 1, 2016	19a-580e(a)
Sec. 6	July 1, 2016	19a-580f(c)
Sec. 7	July 1, 2016	45a-318(a)(2)
Sec. 8	July 1, 2016	45a-660(a)
Sec. 9	October 1, 2016	New section
Sec. 10	October 1, 2016	New section
Sec. 11	October 1, 2016	New section
Sec. 12	October 1, 2016	New section
Sec. 13	October 1, 2016	New section
Sec. 14	October 1, 2016	New section
Sec. 15	October 1, 2016	New section
Sec. 16	October 1, 2016	New section
Sec. 17	October 1, 2016	New section
Sec. 18	October 1, 2016	New section

## Statement of Legislative Commissioners:

In Section 2(a)(10), "directing the disposition of the principal's body upon the disposition of the principal's body upon the death of the

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<u>principal</u>" was changed to "<u>directing the disposition of the principal's body upon the death of the principal</u>" for accuracy. In Section 10(8), "or "document"" was added to the definition for accuracy.

JUD Joint Favorable Subst. -LCO